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| APPLICATION NO.                           | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/819,159                                | 03/27/2001  | Mark E. Vande Pol    | 41813/1             | 2657             |
| 40198                                     | 7590        | 06/13/2006           | EXAMINER            |                  |
| BUSH INTELLECTUAL PROPERTY LAW GROUP, LLC |             |                      | COLBERT, ELLA       |                  |
| P.O. BOX 381146                           |             |                      | ART UNIT            | PAPER NUMBER     |
| BIRMINGHAM, AL 35238                      |             |                      | 3624                |                  |

DATE MAILED: 06/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 09/819,159             | VANDE POL, MARK E.  |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Ella Colbert           | 3624                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) 1 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Claims 1 and 2 are pending. Group II, Claim 2 has been elected for prosecution and Group 1, claim 1 has been withdrawn without traverse in the response to the Election/Restriction filed 4/03/06.

#### ***Claim Objections***

2. Claim 2 is objected to because of the following informalities: Claim 2, line 3 recites "... meet conformances specifications to improve". This line would be better recited "... meet conformances specifications to improve the".

Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 2 recites the limitation "process" in line 3, page 148 and on page 149, line 8 recites "natural process descriptions" and line 10 recites "natural processes". There is insufficient antecedent basis for this limitation in the claim.

#### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claim 2 is rejected under 35 U.S.C. 102(b) as being anticipated by (US 6,253,191) Hoffman.

As per claim 2, Hoffman teaches, A method for managing ecosystem assets, comprising the steps of: developing experimental processes (col. 7, lines 14-27); deviating from said processes to meet conformance specifications to improve condition of ecosystem assets (col. 8, lines 30-53); validating that said experimental processes were conducted according to said specifications (col. 8, lines 43-57); auditing and certifying that said experimental processes were conducted according to said specifications (col. 6, lines 51-64); assessing financial cost of said experimental processes to improve the condition of said ecosystem assets (col. 7, line 50-col. 8, line 4); indemnifying failure to produce outputs that meet specifications posited by the experiment and repair or mitigate said failure (col. 8, lines 5-29); indemnifying failure to allocate sufficient primary coverage to repair or to mitigate said failure (col. 9, line 49-col. 10, line 4); developing natural process descriptions from data derived from said

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experimental mitigating process operations (col. 10, lines 5-40); validating and certifying that said natural processes correspond with said process specifications (col. 10, line 62-col. 11, line 10); assigning financial value to ecosystem assets for their ability to mitigate operational processes (col. 11, lines 19-29); marketing financial value to mitigate operational processes with ecosystem process assets for their ability to mitigate operational processes; indemnifying failure to produce outputs that meet said conformance specifications and mitigate said failure (col. 11, lines 37-42 and figure 7); and indemnifying failure to allocate sufficient primary coverage to mitigate said failure (col. 11, lines 50-57 and figure 7).

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Luskin et al (US 5,812,987) disclosed risk adjusted allocation of assets.

Chiles, Todd H. and McMackin, John F. "INTEGRATING VARIABLE RISK PREFERENCES, TRUST, AND TRANSACTION COST ECONOMICS" disclosed transaction cost economics (TCE), how firms choose governance structures, and risk neutrality.

Jennings, P. Devereaux and Zandbergen, Paul A. "ECOLOGICALLY SUSTAINABLE ORGANIZATIONS: AN INSTITUTIONAL APPROACH" disclosed ecologically sustainable organizations.

### **Inquiries**

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 571-272-6741. The examiner can normally be reached on Tuesday-Thursday, 6:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on 571-272-6747. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
ELLA COLBERT  
PRIMARY EXAMINER

June 10, 2006